COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

RE:	**Investigation into Compliance by**	**)**	
	Electric Companies with §196 of the	**)**	**D.T.E. 98-77**
	Electric Restructuring Act of 1997	)	
		)	

COMMENTS OF THE CAPE LIGHT COMPACT
AND TOWNS OF ACTON AND LEXINGTON

I. INTRODUCTION

On August 13, 1998, the Department of Telecommunications and Energy ("DTE" or "Department") issued a "Notice of Inquiry and Order Seeking Comments" ("NOI") regarding the provisions of Section 196 of the Electric Restructuring Act of 1996 (now codified as G.L. c. 164, §34A, and hereafter referred to as "Section 196" or "c. 164, §34A"). Section 196 requires electric companies to sell street lighting equipment to municipalities that wish to purchase that equipment. It further requires the Department to resolve disputes over the value of the equipment to be sold, the alternative tariff that should apply to a municipality that purchases its lighting equipment, or any other matter that arises in connection with Section 196.

The Cape Light Compact ("Compact") and the towns of Acton and Lexington (all of which will be collectively referred to as "the Towns") offer these comments in response to the NOI.

II. INTEREST OF THE CAPE LIGHT COMPACT AND TOWNS OF ACTON AND LEXINGTON

A. Summary Description of Cape Light Compact

The Cape Light Compact is an inter-municipal consortium whose members include all fifteen towns in Barnstable County and all six towns in Dukes County, as well the two counties themselves.[1] The primary purposes of the Compact are to act as a municipal aggregator on behalf of the member towns and counties, their residents and businesses (pursuant to G.L. c. 164, §134) and to promote competition in the markets for electricity, consistent with the goals of the Restructuring Act, St. 1997, c. 164. All of the Compact's member towns hope to increase competition by seeking alternative sources of generation supply for their street lighting loads. The Compact has participated in other DTE proceedings to represent the interests of its municipal members and consumers on Cape Cod and Martha's Vineyard, including DTE 97-111, regarding the restructuring plan of the COM/Energy companies.

B. Municipal Interest in Purchasing Streetlights

Most cities and towns provide street lighting services within their borders primarily by purchasing a complete package of services from their local utilities, pursuant to tariffs which include delivery of electrical energy to the street lights as well as the street lighting equipment

[1] The Barnstable County towns are: Barnstable, Bourne, Chatham, Dennis, Eastham, Falmouth, Harwich, Hyannis, Mashpee, Orleans, Provincetown, Sandwich, Truro, Wellfleet, Yarmouth. The Dukes County towns are: Aquinnah, Chilmark, Edgartown, Oak Bluffs, Tisbury, and West Tisbury.

itself and related maintenance services.[2] To a much lesser extent, cities and towns own their own street lights and merely purchase the electrical energy they need from the local distribution company.[3] The Towns of Acton and Lexington believe that they could provide street lighting service to their residents at a significantly lower cost if they exercise their purchase options under Section 196, and have already petitioned the Department to resolve their disputes with Boston Edison Company over the appropriate purchase price and other issues. DTE 98-89. One of the Compact's member towns is in the final stages of negotiations to purchase its street lighting system, and expects that an agreement on the sale will be reached soon. Other Compact towns are interested in exploring ownership of their street lighting systems. Providing street lighting is a significant cost for any city or town, and the Cape Light Compact communities, Acton, and Lexington have a significant interest in fair and proper implementation of Section 196.

III. OVERVIEW OF G.L. C. 164, §34A: LEGISLATIVE GOALS

During the debates on the bills that ultimately were adopted as St. 1997, c. 164, the Restructuring Act, numerous municipalities expressed to the legislature their concerns about having the clear legal authority to purchase their street lighting systems. In a deregulated market, municipalities wanted the opportunity to increase competition for street lighting services so that their costs could be lowered. The legislature listened to these concerns, and responded by

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[2] For example, see Boston Edison Company's S-1 rate, under which the company "will furnish, install, own and maintain street lighting facilities." MDTE 876A, Sheet 6.

[3] Some companies have existing unbundled rates that readily allow towns which own their street lights to purchase electrical service. For example, see Boston Edison Company's S-2 rate, under which the company provides electrical energy to "municipalities" for lighting systems which are "owned, operated and maintained by such agencies." MDTE 877A, Sheet 1.

adopting what is now codified as G.L. c. 164, §34A.

Section 34A(b) provides municipalities with a number of clear rights. Municipalities have the right to "acquire . . . the lighting equipment of the electric company" used for street lighting; the right to "purchase electrical energy" used for street lighting "from the electric company or any other person allowed by law to provide electric energy"; and the right to be placed "on an alternative tariff . . . providing for delivery service by the electric company," one that allows "for the use by such municipality of the space on any pole, lamp post, or other mounting surface previously used by the electric company for the mounting of the lighting equipment of the electric company." The legislature has clearly granted municipalities broad and unfettered discretion to purchase their street lighting systems.

Under c. 164, §34A(b), the municipality has the right to purchase street lighting equipment by paying the electric company "its unamortized balance, net of any salvage value obtained by the electric company under the circumstances, in the lighting equipment owned by the electric company in the municipality." Further, the municipality may "acquire all or any part of such lighting equipment" that it chooses. By use of the phrase "unamortized investment," the legislature clearly intended that municipalities should be allowed to purchase street lighting equipment at an easily ascertainable and fair price (a point more fully discussed at §V, *infra)*.

As municipalities such as Acton, Lexington and Haverhill[4] have begun asserting their rights to purchase street lighting systems, some electric distribution companies, not surprisingly, have developed accounting, pricing and valuation theories which seek to maximize the revenues those companies will obtain from selling their street lighting assets and providing electrical energy

[4] See DTE 98-76, the Haverhill petition brought under Section 196.

to cities and towns which purchase their street lights. Many municipalities believe that their distribution companies earn healthy profits from the existing street lighting arrangements, and that the companies will seek to preserve these profits by proposing exorbitant rates for services provided to municipalities which purchase their street lights. For example, Massachusetts Electric Company ("MECo"), the distribution company which serves Haverhill, has filed new, increased street lighting tariffs which Haverhill believes to be unjustifiably high. MDTE 98-69 and 98-76. MECo also seeks to collect from Haverhill the costs of street lights that have already been retired under its sodium vapor conversion program ("Proposed Purchase Price Methodology," Testimony of Theresa M. Burns, p. 9, MDTE 98-76 (July 7, 1998)), to the detriment of Haverhill.[5]

Without even suggesting that the DTE should resolve the Haverhill-MECo disputes in this docket, the Towns urge the DTE to be extremely skeptical of any attempts by utilities to place obstacles in the way of cities and towns that seek to purchase their street lights, whether those obstacles be newly-devised theories of establishing street lighting tariffs, or of determining "unamortized investment," or somewhat misleading concerns about the safety of lighting systems owned and maintained by municipalities. The legislature, through Section 196, has intentionally conferred a real benefit upon municipalities: the option to purchase their street lights by paying the companies their "unamortized investment" in street lighting plant. The legislature must have understood that, in the realm of utility accounting, "unamortized investment" generally results in a lower price than other pricing concepts (e.g., reproduction cost new), and no doubt intended that

[5] The Towns have chosen the MECo-Haverhill dispute as an example because, as far as they are aware, this is the only dispute that has thus far resulted in both the municipality and the utility publicly filing their positions on such issues with the DTE.

many municipalities would be able to reduce their street lighting costs by exercising their Section 196 rights. Certainly, the legislature has the discretion to help municipalities minimize their street lighting costs (short of a pricing concept that would be confiscatory). On their part, the distribution companies certainly understand that cities and towns potentially stand to gain by purchasing their street lights, and will no doubt seek to maximize their own gains from forced sales they might prefer not to make. While the interests of the distribution companies in preserving their revenues are understandable, the DTE should not allow those interests to undercut the opportunity that Section 196 provides to promote competition in the provision of street lighting services.

IV. SCOPE OF THE PROCEEDING

The NOI in this docket states that the Department seeks comments from interested parties "in order to investigate the valuation method of street lighting equipment, and other operational issues that arise with the transfer of street lighting equipment to a municipality." NOI, p. 2. The Department also asks commenters to address:

> the compensation to be paid to the electric companies, including the valuation method; operational issues, including the responsibility and costs for operations and maintenance that will no longer provided by the Company as a tariffed service; pole attachment fees; and safety requirements, including compliance with the requirements of the National Electric Code; as well as other pertinent issues.

All interested parties (including municipalities, utilities, and the Department itself) will no doubt benefit from the broad range of issues encompassed by this language. Section 196 creates new rights for cities and towns, and the Department will be entering new territory in responding to requests to resolve disputes under Section 196. The parties to any of the individual petitions

that may be brought under Section 196 can be better informed as a result of the broad scope of this docket: they may have better notice of the types of issues that should be addressed and of the sources of relevant information on valuation, safety, and operational issues.

While the Towns fully support the notion that a broad-ranging inquiry in this docket serves the public interest, they urge a narrow scope of possible outcomes in this docket, consistent with the apparent intent of the NOI itself, and consistent with due process requirements. The Department has not stated any intent to adopt any regulations as an outcome of this docket. *See* G.L. c. 30A, §2 (regarding notice and hearing procedures for rulemakings). Nor has the Department given any notice that it intends to adopt any ratemaking policies in this docket that would then be applied to individual petitions brought under Section 196. *See, e.g., Boston Gas Co. v. DPU*, 405 Mass. 115, 121 (1989)(discussing various routes by which Department may adopt "ratemaking principles" that have prospective effect).

If the Department intends to enunciate ratemaking principles in this docket, it has not given parties adequate notice that it intends to do so,[6] nor has it given much notice of the precise ratemaking issues to be addressed.[7] Further, the Department's NOI does not offer parties the opportunity to respond to issues that will first be raised in the comments simultaneously filed by

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[6] The notice in this case is fashioned as a "Notice of Inquiry," and simply notes that the Department seeks comments from interested parties "in order to investigate the valuation method of street lighting equipment and other [related] operational issues." The NOI does not provide any notice as to the type of actions, rulings, or orders the Department might adopt as a result of this proceeding.

[7] While the NOI lists the general issues of valuation, costs and responsibility for operations and maintenance, pole attachment fees, and safety issues, parties are allowed to comment on "other pertinent issues" and will no doubt be addressing completely new issues, or detailed aspects of the general issues listed above.

other parties. This is particularly troubling to the Towns, as they anticipate that distribution companies will file comments that directly impinge on their interests. It is thus questionable whether the current NOI is constitutionally adequate for the purpose of adopting specific ratemaking principles that might apply to individual municipal petitions under Section 196, given that parties have been provided only minimal notice of the potential issues to be addressed in this docket, and, at least thus far, offered no opportunity to be heard in response to the comments of others. *See Goldberg v. Kelly*, 394 U.S. 254 (1970)(the fundamental requisite of due process is "the opportunity to be heard," which requires "adequate notice").

Even if better notice and a better opportunity to be heard is not legally required, the Towns urge the Department to consider providing better notice and greater opportunity to comment, given the nature of this proceeding and the importance of properly carrying out the legislature's intent in adopting Section 196. When the Department, in DPU 95-30, addressed the restructuring of the electric industry, the NOI (February 10, 1995) was 24 pages long, including ten pages of questions it wished parties to address. Parties were given an opportunity to submit comments; twelve hearings were then held on the NOI and comments; and parties then had a second opportunity to submit comments. DPU 95-30, pp. 11-13 (1995). While the issues in the present docket do not require anything like the number of hearings and volume of comments in DPU 95-30, the Towns believe that the Department has not provided the bare minimum notice and comment opportunities it must if it intends to adopt any policies or guidelines that will directly impact on the right of the Towns to purchase, operate and maintain their street lighting systems. The Towns thus recommend that the Department adopt few, if any, ratemaking principles as a result of this proceeding, but instead use this as a forum (as noted above) to

identify issues that should be explored in any individual adjudicatory cases and to identify the relevant sources of information that will assist the Department in promptly resolving petitions brought under Section 196. There are several reasons why the Towns recommend this limited scope of outcomes.

First, the Department has the obligation to resolve disputes brought under Section 196 within 60 days. G.L. c. 164, §34A(d). The towns of Acton and Lexington filed a Section 196 petition with the DTE on August 26, 1998 (DTE 98-89); the city of Haverhill previously filed a petition on June 22, 1998 (see July 30, 1998 "Notice of Filing" in DTE 98-76). The entire Acton/Lexington filing (including the Petition, expert affidavit and supporting tables) is a scant 30 pages. The Towns believe that the Department could quickly and efficiently resolve the relatively narrow scope of issues this petition raises. If, however, the Department were to try to first articulate certain general ratemaking principles in this NOI docket, this will almost certainly result in a violation of the rights of Acton and Lexington to a decision within 60 days of their petition. Given the number of parties that are likely to participate in this NOI proceeding and the broad range of issues they will likely raise, it is highly unlikely that this present proceeding will conclude promptly if the anticipated result is the announcement of detailed ratemaking principles that will apply to Section 196 proceedings.[8]

Second, while Section 196 applies to all municipal petitions to purchase street lighting equipment, it appears that the facts of each case will vary quite significantly from utility to utility

[8] The Towns note that the DTE has demonstrated the ability to quickly resolve complex adjudicatory disputes, even in the absence of a statutory mandate to do so. See, for example, August 25, 1998 Procedural Schedule in *Petition of Cambridge Electric Co. et al.*, DTE 98-78/83 (two months between initial filing of 8-volume petition seeking approval of $462 million asset sale, and date for final briefs).

and from town to town. Thus, this generic docket will undoubtedly raise a far longer list of issues than will be raised in any individual case, and the positions of one utility (or one town) may be directly contradictory to the position of another utility (or another town). In such a context, the interests of all parties would be best served if the Department adjudicated the more narrow set of issues that may be raised in any one case based upon the facts and arguments in that case, rather than attempting to establish some general ratemaking principles based upon the broader and more general facts the Department is likely to see in this NOI.

For example, MECo, in its dispute with Haverhill, takes the position that it does not seek to impose any pole attachment fees because "street lights, as installed by [MECo], generally do not impose a burden on usable space on a pole." "Proposed Purchase Price Methodology," Testimony of G. Paul Anundson, p. 5, DTE 98-76 (July 7, 1998). While the Towns would benefit if the DTE adopted the position MECo has taken, and believe such a result is mandated as a matter of law in most instances,[9] the Towns are also aware that other utilities might take a contradictory position. The Towns believe that it is not in the public interest to announce any ratemaking principles regarding pole attachment fees in an NOI-type proceeding, but rather that the Department should make company-specific decisions in individual Section 196 dockets, based on the specific facts regarding how a particular company makes its pole attachments, the other users who make attachments to that utility's poles, and the ratemaking techniques that particular utility employs to recover the cost of poles from regular distribution customers, municipal street lighting customers, and others.

Similarly, one of the issues apparently in dispute between Haverhill and MECo is whether

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[9] See the Joint Petition of Acton and Lexington in DTE 98-89, pp. 6 - 7.

there should be continuing charges for dedicated poles, because Haverhill wishes to purchase the luminaires but not the poles, at least at some locations. "Proposed Purchase Price Methodology," Testimony of Theresa M. Burns, p. 10, DTE 98-76 (July 7, 1998). As the Acton/Lexington petition makes clear, these towns wish to purchase all of their street lighting equipment, including dedicated poles. The Towns again suggest that, given these varying and municipality-specific situations, the public interest is best served by deciding specific issues, such as charges for dedicated poles, based on the narrower, specific facts of a particular docket, rather than in the more abstract context of a NOI.

More generally, the two petitions thus far filed (DTE 98-76 and DTE 98-89) raise a sufficient number of issues unique to each docket so that it would be far more efficient to adjudicate those issues based on the evidence that will be adduced in each docket, rather than attempting to enunciate general ratemaking or valuation principles in this docket.

V. VALUATION ISSUES

G.L. c. 164, §34A(b) provides a very clear standard for evaluating the street lighting equipment to be sold to a city or town:

> Any municipality exercising the option to convert its street lighting service pursuant to section (a) shall be required to compensate the electric company for its unamortized investment, net of any salvage value obtained by the electric company under the circumstances, in the lighting equipment owned by the electric company in the municipality as of the date the electric company receives notice of such exercise pursuant to subsection (a).

The concept of "unamortized investment" is fairly well established in utility practice, as noted on page 1 of the affidavit filed by Paul L. Chernick in DTE 98-89:

> In utility practice, unamortized investment is equal to the gross plant in service, net of accumulated depreciation. Gross plant in service, in turn, is equal to cumulative additions minus cumulative requirements.

See, e.g., Southbridge v. Southbridge Water Supply Co., 371 Mass. 209, 216 (1976)("company's investment upon which it is entitled to earn a fair and reasonable return" equals "original cost of plant, less accrued depreciation"). The Department should carry out the obvious intent of the legislature in adopting the plain language of §34A[10] and rebuff any attempts by distribution companies to devise novel interpretations of "unamortized investment" that would unduly inflate the purchase price.

One issue that may arise in applying the valuation language of Section 196 is the extent of the equipment that the municipality must purchase. For example, a distribution company might argue (as MECo has in its dispute with Haverhill) that a city or town must pay for lighting equipment that has already been retired, such as outdated or inefficient bulbs or luminaires. A company might also seek to recovery for inventory it maintains to repair or replace functioning street lighting equipment, including such equipment physically located outside the city or town. The language of G.L. c. 164. §34A(b), however, appears to prohibit recovery for retired or inventoried plant, in that it provides:

> Any municipality . . . shall be required to compensate the electric company for its unamortized investment, net of any salvage value obtained by the electric company under the circumstances, in the lighting equipment owned by the company *in the municipality as of the date the electric company receives notice* [of intent to purchase] . . . .

(Emphasis added). The legislature has both geographically and temporally delimited the equipment for which compensation is due: equipment in the town as of the date notice is received.

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[10] *See* G.L. c. 4, §6, cl. 3, regarding interpretation of statutes.

Neither equipment inventoried elsewhere nor previously retired equipment may be included in the purchase.[11]

Another issue that will arise in applying the valuation language of Section 196 is establishing the depreciation rate to be used in determining the "unamortized investment." As the affidavit of Paul L. Chernick in DTE 98-89 points out, depreciation rates for street lighting equipment in particular must be higher than the overall depreciation rate for all distribution equipment, as luminaires have far shorter useful lives than conduits and other general distribution equipment. In any of the municipal-specific proceedings under G.L. c. 164, §34A(d), the Department must insure that companies apply the appropriate, street lighting-specific depreciation rates, even if this means relying upon "best estimates" of these rates. See Chernick Affidavit, pp. 2 - 7.

Finally, the Towns anticipate that there will be different viewpoints about a "system average" approach to valuation street lighting equipment versus a "town-by-town" approach. See, for example, Burns Testimony, pp. 3 - 7 in DTE 98-76. The system average approach develops a single price for light and pole types, regardless of their age or location in the utility's service territory. The town-by-town approach determines the "unamortized investment" based on the actual investment in the plant in that community, less accumulated depreciation. It is possible that utility companies may take different positions on this issue, depending on the extent to which

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[11] Even as to this apparently generic issue, the Towns note that MECo, in its "Proposed Purchase Price Methodology" filing in DTE 98-76, has raised some unique facts about its sodium vapor street light conversion program, and explicitly distinguishes itself from either Boston Edison Company or Eastern Edison Company. (Burns Testimony, p. 9). Thus, the Towns again caution the DTE about establishing any ratemaking principles based only upon comments in this NOI, given the many unique facts that must be explored in individual adjudicatory proceedings.

the company maintains adequate data on street lighting investments on a town-by-town basis. It is certain that towns will take different positions, as towns with older-than-average equipment benefit from the town-by-town approach and towns with newer-than-average equipment benefit from the system average approach.

The Towns believe that this question is best decided based on the specific information in individual proceedings under §34A(d). While some companies may not have sufficient town-by-town data to make this approach reasonable, the Towns do not believe this is generally the case. They also note that Lexington and Acton have the right to a determination of the value of their street lighting within their previously-docketed proceeding, DTE 98-89, in which these two towns filed town-specific data available from BECo. To the extent that the DTE wishes to entertain arguments about a system average approach to valuation, it should do so in the MECo docket, in the context of facts specific to MECo.

VI. POLE ATTACHMENT FEES

MECo has already submitted testimony that it does not intend to seek fees from Haverhill for attaching to its poles street lights that Haverhill seeks to acquire, although it reserves the right to propose these fees in the future. DTE 98-76, Burns Testimony, p. 10. The Towns believe that there should generally be no pole attachment fees imposed on towns which purchase their street lights, for the reasons discussed below.

Distribution companies enjoy the right to place poles in public streets and ways solely through grants made by cities and towns. G.L. c. 166, §22. Towns grant these companies the right to place their poles in public ways in order to give the public access to the companies'

distribution systems, and enjoy the benefits of a supply of electricity. At the time of making these grants, towns may require the company to place fire alarm or other municipal wires on the poles, at no charge. *Postal Telegraph Cable Co. v. Chicopee*, 207 Mass. 341, 344, 347 (1911). Even after the grants are made, towns continue to own the land upon which the poles are placed, and have the obligation and expense of maintaining it.[12] It is simply bad public policy to allow companies to charge towns for making pole attachments on poles placed on public property by permission of the town itself, especially as there is no marginal or incremental cost to the company in allowing a street light to remain attached to a pole.

Applying concepts more traditionally used in ratemaking cases to the question of pole attachment fees, street lights are often placed in what is otherwise non-usable space which could not produce revenues for the utility: locations where the utility would not allow cable or other attachments.[13] DTE 98-76, Anundson Testimony, pp. 5 - 6. If existing street lights are in non-usable space, there is no need to charge attachment fees.

Second, at least for companies that properly design their street lighting rates, an allocated portion of the pole is already included in the rate, and allowing a separate pole attachment fee would provide an unjustified windfall to the utility.

Third, the Restructuring Act allows municipalities to succeed to the same arrangements

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[12] The poles increase the towns' maintenance expenses, among other ways, by making it more difficult to mow any grass in the right-of-way or to operate street-cleaning equipment without hindrance.

[13] *See* G.L. c. 166, §25A and 47 U.S.C. §224 regarding regulation of prices for cable attachments. In *Greater Media One, Inc. v. DPU*, 415 Mass. 409, 416-417 (1993), which interpreted §25A, the Court highlighted the arrangement under which the telephone company reserved free conduit space for municipal uses.

that utility companies make with telephone companies regarding use of poles, G.L. c. 164, §34A(c). Those arrangements usually allowing the utility free access to poles owned by the telephone company upon which lights are placed. Wherever such arrangements exist, cities and towns have the right to free pole placements.

In any event, Acton and Lexington have placed the pole attachment issue in dispute through their Section 196 petition in DTE 98-89. They have the right to an adjudicatory decision based on the actual evidence in that docket, and the right to adduce evidence through presenting a direct case and cross-examining witnesses. G.L. c. 30A, §11; c. 164, §34A(d). The Department therefore cannot decide in this docket whether Acton and Lexington must pay any pole attachment fees to BECo.

VII. OPERATIONS, MAINTENANCE AND SAFETY ISSUES

For the past century, municipalities in Massachusetts which have their own electric light departments have been safely operating and maintaining electric systems, including street lighting plant, pursuant to G.L. c. 164, §§34ff. They have successfully employed properly-certified employees to carry out the necessary work, and have complied with all applicable safety codes. No party can suggest that they have done so any less safely or efficiently than investor-owned utilities (IOUs). In many cases, municipalities provide their residents electricity at lower rates than IOUs operating in adjoining towns. There is simply no basis for the Department to speculate that towns will not safely and efficiently operate any street lighting equipment that they acquire, and nothing the Towns have seen in any street lighting filings thus far suggests to the contrary.

Regarding the safety codes addressed by MECo in the Anundson Testimony, pp. 2 - 4, in

DTE 98-76 , it is important to note that MECo has not suggested that Haverhill (or any other municipality) will not operate its street lights safely or will not be able to comply with the applicable safety codes. The National Electrical Code, Art. 90-4, allows the town wiring inspector "to waive specific requirements in this *Code* or permit alternate methods where it is assured that equivalent objectives can be achieved." While MECo has provided the Department and interested parties useful information about the applicable safety codes, the Towns see no need for the DTE to make any rulings in a generic docket regarding safety and O&M issues. Rather, in the absence of a party invoking the dispute resolution mechanisms of Section 196 to resolve particular safety issues, the Department should allow parties to work out among themselves how the street lighting system will be safely maintained an operated after any sale.

VIII. EQUIPMENT TO BE SOLD

Pursuant to Section 196, a city or town has the option to purchase all, or any portion, of the street lighting equipment in that city or town, including luminaires, brackets, and poles dedicated only to providing street lighting service. While some companies may assert that they can refuse to sell poles or brackets, the law itself clearly requires sale of these items if the city or town so requests.

G.L. c. 164, §34A(a) allows a city or town to purchase the:

> lighting equipment owned by the company, such as ballasts, fixtures, and other equipment necessary for the conversion of electrical energy into street lighting service.

Further, the company must offer cities and towns which own or lease their own lighting equipment an alternative street lighting tariff that provides:

> for the use by such municipality of the space on any pole, lamp post, or other mounting surface previously used by the electric company.

§34A(a)(i). Under this language, the municipality unquestionably has the right to purchase the bulbs, luminaires, and brackets, because it would otherwise have no need or ability for attachment "space on any pole, lamp post, or other mounting surface." Similarly, the provisions of 34A(c), regarding municipal lighting attachments on poles owned by "any person other than an electric company" would have no meaning unless the city or town is allowed to purchase all of the lighting equipment up to the pole itself.

The legislature also obviously intended that cities and towns can buy poles dedicated solely to street lighting (e.g., where regular electric distribution service is buried underground, or on lit roadways that do not have other general distribution lines). The only reasons a company would wish to keep dedicated poles are to maintain a rate base investment that earns a return, or simply to interfere with the right of the municipality to operate a street lighting system at the lowest possible cost. Either of these purposes is completely contrary to the plain language of §34A, and bad public policy. The plain meaning of the words "lighting equipment" includes dedicated poles that serve no purpose other than to provide street lighting.

IX. MISCELLANEOUS ISSUES

Distribution companies may raise concerns about indemnification agreements from municipalities that purchase street lighting equipment, licensing agreements, and the potential need to relocate brackets on poles (or to relocate the poles themselves). The Towns believe that these issues tend to be very specific to the particular municipality and company, and that generic

rulings at this stage should be avoided. Further, if companies and municipalities are willing to negotiate street lighting sales in good faith, these contractual issues should be resolved without any resort to the Department's authority to resolve disputes. To the extent companies raise these issues here, however, the Towns reserve the right to submit reply comments.

X. CONCLUSIONS

The legislature has knowingly conferred broad and advantageous rights upon municipalities to purchase and operate their street lighting systems, in connection with the overall purpose of increasing competition in electricity markets and breaking up the monopoly that distribution companies previously enjoyed. In resolving disputes that may be brought to it under Section 196, the Department should always keep this legislative goal in mind.

While the present docket serves a useful purpose for the Department itself and all interested parties, by identifying issues, the positions of parties, and relevant sources of information, the Department should avoid announcing ratemaking principles in this case that would either be binding or given strong precedential effect in individual cases brought pursuant to Section 196. The relevant facts will vary from town to town and from company to company, and the scope of issues to be raised in any one case would be best addressed based on the specific facts and arguments offered in that case. In addition, the Department has not given parties the detailed notice of issues and adequate opportunity to respond to the comments of other parties that should be a prerequisite to enunciating binding or precedential rate making principles.

To the extent the Department intends to announce any guidelines or principles as a result of the NOI, the Towns reserve their right to submit additional comments, either in reply to the

comments submitted by others or in response to any draft findings, guidelines or principles the Department may choose to circulate to the parties.

Respectfully submitted,

CAPE LIGHT COMPACT
TOWN OF LEXINGTON
TOWN OF ACTON

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